

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 288

Introduced by Senator Sher

February 19, 2003

An act to *amend Section 41652 of, and to add Chapter 4.5* (commencing with Section 42500) to Part 4 of Division 26 of, the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as amended, Sher. Air quality: ~~New Source Review Restoration~~ *Protect California Air Act of 2003.*

(1) Existing law, the federal Clean Air Act, requires each major new and modified source of air pollution to undergo “new source review” to ensure that facilities install the best available control equipment, obtain offsets for any new emissions, and comply with any other requirement to ensure that the new and modified sources do not adversely affect air quality. On December 31, 2002, ~~federal the Administrator of the United States Environmental Protection Agency promulgated~~ regulations implementing the new source review program ~~were adopted~~ that alter that program. Under the federal Clean Air Act, states may adopt air pollution control requirements that are more stringent than federal requirements. Existing law designates the State Air Resources Board as the air pollution control agency responsible for the coordination of the activities of air pollution control districts and air quality management districts for the purposes of the federal Clean Air Act. Subject to the powers of the state board, the districts are required to adopt and enforce rules and regulations to achieve and maintain the

state and federal ambient air quality standards in all areas affected by nonvehicular emission sources under their jurisdiction. Each district is authorized to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

This bill would establish the ~~New Source Review Restoration~~ *Protect California Air Act* of 2003. The bill would require the state board ~~and the districts to adopt regulations that incorporate all federal guidance documents and regulations implementing the federal new source review program as it existed on December 30, 2002. The bill would also require the state board to adopt regulations that incorporate~~ *enforce* and implement specified provisions of the Code of Federal Regulations pertaining to new source review, as they existed on December 30, 2002. The bill would provide that its provisions, and all regulations adopted pursuant to its provisions, apply retroactively to December 30, 2002. The bill would require the state board, within 90 days after the effective date of this act, to incorporate into the California Code of Regulations the list of categories of stationary sources adopted by the administrator of the Environmental Protection Agency pursuant to federal law, and within one year after the effective date of the bill, incorporate by reference into the California Code of Regulations all regulations adopted by the Administrator of the Environmental Protection Agency that establish standards of performances for new sources. The bill would require these incorporated federal standards to remain in effect until the state board, following public notice and comment, adopts new performance standards. The bill would require the state board to review these new performance standards at least every 8 years. The bill would authorize each district to develop and submit to the state board a procedure for implementing and enforcing standards of performance for new sources located within the jurisdiction of the district. The bill would also require the state board to prescribe regulations that establish a procedure similar to that provided in existing federal law under which each district is required to submit a plan to the state board that establishes standards for performance for any existing source for any air pollutant for which air quality criteria have not been issued but to which a standard of performance would apply if the existing source were a new source, and that provides for the implementation and enforcement of those standards of performance.— The bill would



authorize the state board to prescribe a plan for a district if the state board determines the district plan to be unsatisfactory, and authorizes the state board to enforce the provisions of that plan if the district fails to do so.

The bill would authorize any person who proposes to own or operate a new source to request a district for one or more waivers from the requirements of these provisions with respect to any air pollutant in order to encourage the use of an innovative technological system of continuous emission reduction, and would authorize the district to grant a waiver if, after public notice and comment, it determines the proposed system meets specified criteria.

The bill would require the state implementation plan for the federal act to contain emission limitations and other measures that the state board determines may be necessary to prevent significant deterioration of air quality in each region designated as attainment or unclassifiable pursuant to federal law. The bill would require that in the case of sulfur dioxide and particulate matter, ~~each applicable~~ *the state implementation plan* contain measures assuring that maximum allowable increases over baseline concentrations and maximum allowable concentrations of the pollutant not be exceeded. The bill would specify the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of the pollutant for class I, class II, and class III areas, as defined.

The bill would prohibit construction on a major emitting facility unless a permit has been issued that meets specified requirements, including that the permit has been reviewed under the provisions of the bill, interested parties have had the opportunity to comment, and the owner or operator of the facility demonstrates that emission from construction or operation of the facility will not cause, or contribute to, air pollution in excess of specified concentrations and standards. The bill would prohibit the issuance of a permit if the Federal Land Manager or other federal official provides specified findings to the ~~state board~~ *district* relating to the adverse impact of the facility on air quality. The bill would require the state board to adopt regulations at least as stringent as those adopted by the Administrator of the federal Environmental Protection Agency, that were in effect on December 30, 2002, to prevent the significant deterioration of air quality which would result from the emissions of hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides. The bill would require the state board or the district with jurisdiction to take those measures



necessary to prevent the construction or modification of a major emitting facility, as defined, that does not conform to the provisions of the bill.

The bill would establish plan requirements for nonattainment areas, as defined and would require the provisions of the plan to include providing for the implementation of all reasonably available control measures as expeditiously as practicable, attainment of the national primary ambient air quality standards, inventories of actual emissions, and enforceable emissions limitations. The bill would also require the plan provisions to require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area.

The bill would authorize the issuance of permits to construct and operate if the permitting agency makes certain determinations pertaining to emissions of pollutants resulting from the new or modified source. The bill would provide that the owner or operator of a new or modified major stationary source may comply with any offset requirement under this act for increased emissions of any air pollutant only by obtaining emission reductions ~~of the air pollutant from the same source or other sources in the same nonattainment area, but would authorize the owner or operator to obtain offsets from another nonattainment area if the other area has an equal or higher nonattainment classification, and the emissions in the other area contribute to violations of the national ambient air quality standard pursuant to existing provisions of state law.~~

The bill would set forth, for any area designated as a nonattainment area for national ambient air quality standards, specified offset requirements. The bill would set forth the requirements for commencing a civil action to enforce an emission standard or limitation, as defined, ~~to or an order issued by the federal administrator, the state board, or a district to perform an act under the provisions of this act with respect to an emission standard or limitation.~~

(2) Existing law makes a violation of any rule, regulation, permit, or order of the state board and a district a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program. To the extent this bill would establish duties for districts it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 41652 of the Health and Safety Code is*
2 *amended to read:*

3 41652. If, after ~~the~~ a public hearing, the state board finds that
4 the nonattainment area plan approved by the ~~designated air quality~~
5 ~~planning agencies~~ district does not comply with the requirements
6 of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), *or with Chapter*
7 *4 (commencing with Section 42300)*, the state board may adopt
8 such revisions as necessary to comply with such requirements,
9 except as otherwise provided in Article 5.5 (commencing with
10 Section 53098) of Chapter 1 of Part 1 of Division 2 of Title 5 of
11 the Government Code.

12 SEC. 2. Chapter 4.5 (commencing with Section 42500) is
13 added to Part 4 of Division 26 of the Health and Safety Code, to
14 read:

15
16 ~~CHAPTER 4.5. NEW SOURCE REVIEW RESTORATION ACT OF 2003~~
17

18
19 CHAPTER 4.5. *PROTECT CALIFORNIA AIR ACT OF 2003*
20

21 Article 1. *Findings, Declaration, and Intent*
22

23 42500. This ~~article~~ chapter shall be known, and may be cited,
24 as the ~~New Source Review Restoration Act of 2003~~. *Protect*
25 *California Air Act of 2003*.

26 42501. The Legislature finds and declares all of the
27 following:

28 (a) The people of the State of California have a primary interest
29 in safeguarding the air quality in the state from degradation and in
30 ensuring the enhancement of the air quality of the state. For over
31 25 years, the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.);

1 has required major new and modified sources of air pollution to
2 undergo “new source review,” to ensure that those facilities install
3 the best available control equipment, obtain offsets for any new
4 emissions, and comply with other requirements to ensure that such
5 new and modified sources do not adversely affect air quality.

6 (b) New source review has been a cornerstone of state efforts
7 to reduce pollution from older industrial sources by requiring
8 facilities to install the best available control technology when they
9 undergo major modifications.

10 (c) On December 31, 2002, the ~~President of the United States~~
11 *Administrator of the United States Environmental Protection*
12 *Agency* promulgated regulations that substantially ~~alters~~ *weaken*
13 the federal program of new source review (67 Fed. Reg.
14 80186-80289 (Dec. 31, 2002)).

15 (d) These new regulations threaten to undermine the air quality
16 of the State of California and thereby threaten the health and safety
17 of the people of the State of California.

18 (e) *The new source review program in this state has been*
19 *implemented directly by the air pollution control and air quality*
20 *management districts in the state, which are charged with primary*
21 *responsibility for controlling pollution from nonvehicular sources.*
22 *The district rules implementing that program have generally*
23 *resulted in significant reductions in emissions over and above the*
24 *minimum requirements of the federal new source review program*
25 *necessary to meet the health-based state and federal ambient air*
26 *quality standards in all areas of the state. It is critical to the health*
27 *and welfare of all Californians to maintain and improve the*
28 *existing new source review program.*

29 (f) Section 7416 of Title 42 of the United States Code,
30 contained in the federal Clean Air Act, protects the right of states
31 to adopt air pollution control requirements that are more stringent
32 than federal requirements. Moreover, the proposed regulations
33 provide that the states may adopt permitting programs that are “at
34 least as stringent” as the new federal “revised base program” (67
35 Fed. Reg. 80241).

36 ~~(f)–~~

37 (g) The intent of this chapter is to adopt into state law the
38 federal new source review program as it existed on December 30,
39 2002 *as minimum state standards in order to protect California air*
40 *quality and the health of all Californians.*

~~(g)~~

(h) The program set forth in this chapter imposes more stringent standards than the new federal “revised base program” set forth in 67 Fed. Reg. 80186-80289.

42502. The purposes of this chapter are all of the following:

(a) ~~(1)~~ To protect the public health and welfare from any actual or potential adverse effect which in the judgment of the state board or local district may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all national ambient air quality standards.

~~(2)~~

(b) To preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value.

~~(3)~~

(c) To ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.

~~(4)~~

(d) To ensure that emissions from any source in the state will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other state.

~~(5) To ensure that any decision to permit increased air pollution~~

(e) To ensure that any decision to permit increased air pollution from major sources in any area to which this chapter applies is made only after careful evaluation of all the consequences of that decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

(f) To establish the previous federal new source review program as a minimum standard to prohibit a district from adopting a rule or regulation that is less protective of air quality than the requirements of this chapter while also authorizing districts to adopt regulations that are more protective of air quality than the requirements of this chapter.

~~42503. (a) The state board shall adopt regulations that incorporate and implement the following provisions of the Code of Federal Regulations, as they existed on December 30, 2002:~~

1 42503. (a) *The state board and the districts shall implement*
2 *and enforce the following provisions of the Code of Federal*
3 *Regulations, as they existed on December 30, 2002, as revised by*
4 *the provisions of this chapter:*

5 (1) Section 51.160 of Title 40 of the Code of Federal
6 Regulations.

7 (2) Section 11.2.3.2 of Appendix W of Part 51 of Title 40 of the
8 Code of Federal Regulations.

9 (3) Section ~~11.2.3.2~~ 11.2.3.3 of Appendix W of Part 51 of Title
10 40 of the Code of Federal Regulations.

11 (4) Appendix S of Part 51 of Title 40 of the Code of Federal
12 Regulations.

13 (5) Section 51.161 of Title 40 of the Code of Federal
14 Regulations.

15 (6) Section 51.162 of Title 40 of the Code of Federal
16 Regulations.

17 (7) Section 51.163 of Title 40 of the Code of Federal
18 Regulations.

19 (8) Section 51.164 of Title 40 of the Code of Federal
20 Regulations.

21 (9) Section 51.165 of Title 40 of the Code of Federal
22 Regulations.

23 (10) Section 51.166 of Title 40 of the Code of Federal
24 Regulations.

25 ~~(11) Section 52.21 of Title 40 of the Code of Federal~~
26 ~~Regulations.~~

27 ~~(12)–~~

28 (11) Section 52.24 of Title 40 of the Code of Federal
29 Regulations.

30 ~~(13)–~~

31 (12) Section 60.2 of Title 40 of the Code of Federal
32 Regulations.

33 ~~(14)–~~

34 (13) Section 60.14 of Title 40 of the Code of Federal
35 Regulations.

36 ~~(15)–~~

37 (14) Section 60.15 of Title 40 of the Code of Federal
38 Regulations.

39 (b) The Legislature finds and declares that the federal
40 provisions set forth in subdivision (a) have, for the most part,

1 already been ~~implemented by the state board~~ *substantially*
2 *implemented by the state board and the districts* pursuant to federal
3 law as it existed on December 30, 2002.

4 42504. (a) This chapter, and all regulations adopted pursuant
5 to this chapter, shall apply retroactively to December 30, 2002.

6 (b) Unless otherwise specified, all references to sections of the
7 United States Code are to those sections as they existed on
8 December 30, 2002.

9 42505. For purposes of this chapter, the following definitions
10 apply:

11 (a) “Administrator” means the administrator of the United
12 States Environment Protection Agency.

13 (b) “District” means an air pollution control district or air
14 quality management district.

15 (c) “Existing source” means any stationary source other than
16 a new source.

17 (d) “Modification” means any physical change in, or change
18 in the method of operation of, a stationary source that increases the
19 amount of any air pollutant emitted by that source, or which results
20 in the emission of any air pollutant not previously emitted. ~~A~~
21 ~~conversion to coal under either of the following circumstances is~~
22 ~~not a modification for purposes of this subdivision or subdivision~~
23 ~~(d):~~

24 ~~(1) As a result of an order pursuant to Section 2(a) of the Energy~~
25 ~~Supply and Environmental Coordination Act of 1974 (15 U.S.C.~~
26 ~~Sees. 791, 792(a)), or any amendment thereto, or any subsequent~~
27 ~~enactment which supersedes that act.~~

28 ~~(2) That qualifies under Section 7413(d)(5)(A) of Title 42 of~~
29 ~~the United States Code.~~

30 (e) “New source” means any stationary source, the
31 construction or modification of which is commenced after ~~the~~
32 ~~publication of regulations or proposed regulations pursuant to this~~
33 ~~chapter that prescribes a standard of performance that is applicable~~
34 ~~to that source. January 1, 2004.~~

35 (f) “Owner” or “operator” means any person who owns,
36 leases, operates, controls, or supervises a stationary source.

37 (g) “Standard of performance” or “performance standard”
38 means a standard for emissions of air pollutants that reflects the
39 degree of emission limitation achievable through the application
40 of the best system of emission reduction which, taking into account

1 the cost of achieving that reduction and any nonair quality health
2 and environmental impact and energy requirements, the state
3 board determines has been adequately demonstrated, and that is at
4 least as stringent as those promulgated by the ~~administrator~~
5 *Administrator* of the United States Environmental Protection
6 Agency (administrator) pursuant to Section 7411 of Title 42 of the
7 United States Code.

8 (h) “State board” means the State Air Resources Board.

9 (i) “Stationary source” means any building, structure, facility,
10 *article, machine, equipment, contrivance*, or installation that
11 emits or may emit any air pollutant.

12 (j) “Technological system of continuous emission reduction”
13 means either of the following:

14 (1) A technological process for production or operation by any
15 source which is inherently low-polluting or nonpolluting.

16 (2) A technological system for continuous reduction of the
17 pollution generated by a source before that pollution is emitted into
18 the ambient air, including precombustion cleaning or treatment of
19 fuels.

20 ~~42507. Nothing in this chapter prohibits the state or any~~

21 *42507. (a) Nothing in this chapter prohibits a district, the*
22 *state, or any political subdivision thereof to adopt or enforce any*
23 *standard or limitation respecting emissions of air pollutants or any*
24 *requirement respecting the control or abatement of air pollution,*
25 *except that if an emission standard or limitation is in effect under*
26 *this chapter, such or the applicable state implementation plan, that*
27 *district or other state or political subdivision may not adopt or*
28 *enforce any emission standard or limitation which is less stringent*
29 *than the standard or limitation under this chapter.*

30 *(b) In the event of a conflict between the provisions of this*
31 *chapter and Division 26 (commencing with Section 39000), the*
32 *provisions of Part 1 (commencing with Section 39000), Part 2*
33 *(commencing with Section 39500), and Chapter 1 (commencing*
34 *with Section 40000), Chapter 2 (commencing with Section 40100),*
35 *Chapter 3 (commencing with Section 40150), Chapter 4*
36 *(commencing with Section 40200), Chapter 5 (commencing with*
37 *Section 40300), Chapter 5.5 (commencing with Section 40400),*
38 *Chapter 6 (commencing with Section 40700), Chapter 6.5*
39 *(commencing with Section 40725), Chapter 7 (commencing with*
40 *Section 40750), Chapter 8 (commencing with Section 40800),*

Chapter 9 (commencing with Section 40900), Chapter 10 (commencing with Section 40910), Chapter 11 (commencing with Section 40950), Chapter 13 (commencing with Section 41200), and Chapter 14 (commencing with Section 41300), of Part 3, specifically including, but not limited to, Sections 40918, 40919, 40920, and 40920.5, the provisions that, based on a comparison of the terms of the provisions, are more protective of air quality shall prevail.

(c) Nothing in this chapter shall prevent any district or the state board from adopting a rule or measure that is more protective of air quality than this chapter.

(d) District rules that were approved and incorporated into the state implementation plan or as part of the Title V operating permit program by the United States Environmental Protection Agency prior to December 30, 2002, or that are found by the state board to be equally as stringent or more stringent than this chapter shall be deemed to comply with the requirements of this chapter.

(e) Nothing in this article shall prevent any district from revising its permitting program in a manner that is consistent with state law.

Article 2. Prevention of Significant Deterioration of Clean Air

42508. The state implementation plan required by Section 7410(a) of Title 42 of the United States Code shall contain emission limitations and other measures that the state board determines may be necessary to prevent significant deterioration of air quality in each region or portion thereof designated pursuant to Section 7407 of Title 42 of the United States Code as ~~attainment or unclassifiable~~ “attainment” or “unclassifiable.”

42509. All areas in the state shall be designated according to this section for purposes of prevention of significant deterioration of air quality:

(a) All international parks, national wilderness or memorial parks that exceed 5,000 acres in size, and all national parks that exceed 6,000 acres in size, which were in existence as of August 7, 1977, shall be designated as class I, and may not be redesignated. All areas which were redesignated as class I under federal regulations adopted before August 7, 1977, shall be class I areas which may be redesignated as provided in this chapter.

(b) All areas in the state designated pursuant to Section 7407(d) of Title 42 of the United States Code as ~~attainment or unclassifiable~~ “attainment” or “unclassifiable” which are not established as class I shall be class II areas.

42510. (a) In the case of sulfur dioxide and particulate matter, ~~each applicable~~ *the state* implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations and maximum allowable concentrations of the pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under Section 7475(d)(2)(C)(iv) of Title 42 of the United States Code for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, ~~the regulations shall permit maximum allowable increase~~ *period) the regulations shall permit the maximum allowable increase* to be exceeded during one period per year.

(b) For any class I area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of the pollutants shall not exceed the following amounts:

(1) For particulate matter, five micrograms per cubic meter as an annual geometric mean and 10 micrograms per cubic meter as a 24-hour maximum.

(2) For sulfur dioxide, two micrograms per cubic meter as an annual arithmetic mean, five micrograms per cubic meter as a 24-hour maximum, and 25 micrograms per cubic meter as a three-hour maximum.

(c) For any class II area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of the pollutants shall not exceed the following amounts:

(1) For particulate matter, 19 micrograms per cubic meter as an annual geometric mean and 37 micrograms per cubic meter as a 24-hour maximum.

(2) For sulfur dioxide, 20 micrograms per cubic meter as an annual arithmetic mean, 91 micrograms per cubic meter as a 24-hour maximum, and 512 micrograms per cubic meter as a three-hour maximum.

(d) For any class III area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the

baseline concentration of the pollutants shall not exceed the following amounts:

(1) For particulate matter, 37 micrograms per cubic meter an annual geometric mean, and 75 micrograms per cubic meter as a 24-hour maximum.

(2) For sulfur dioxide, 40 micrograms per cubic meter as an annual geometric mean, 182 micrograms per cubic meter as a 24-hour maximum, and 700 micrograms per cubic meter as a three-hour maximum.

(e) The maximum allowable concentration of any air pollutant in any area to which this chapter applies shall not exceed a concentration for the pollutant for each period of exposure equal to whichever concentration is lowest for the pollutant for the period of exposure:

(1) The concentration permitted under the national secondary ambient air quality standard.

(2) The concentration permitted under the national primary ambient air quality standard.

(f) The state board may, after notice and opportunity for public hearing, issue orders or adopt rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of the pollutant shall not be taken into account:

(1) Concentrations of the pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under subsections (a) and (b) of ~~Section 792 of the of Title 15 of the United States Code, or any~~ *Section 792 of Title 15 of the United States Code, or any* subsequent legislation which supersedes those provisions, over the emissions from those sources before the effective date of the order.

(2) The concentrations of the pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act (16 U.S.C. Sec. 791a et seq.) over the emissions from those sources before the effective date of the plan.

(3) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities.

(4) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined in accordance with Section 7479(4) of Title 42 of the United States Code.

(g) No action taken with respect to a source under paragraph (1) or (2) of subdivision (f) shall apply more than five years after the effective date of the order referred to in paragraph (1) of subdivision (f) or the plan referred to in paragraph (2) of subdivision (f), whichever is applicable. If both orders and plans are applicable, no action shall apply more than five years after the later of the effective dates.

42511. (a) No major emitting facility *as defined in subdivision (a) of Section 42514* on which construction is commenced after ~~August 7, 1977~~ *January 1, 2004*, may be constructed in any area ~~to which this chapter applies~~ unless all of the following occurs:

(1) A permit has been issued for the proposed facility ~~in accordance with this chapter~~ *by the district* setting forth emission limitations for the facility ~~which conform to the requirements of this chapter~~ *the facility in accordance with the requirements of this article*.

(2) The proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations adopted by the ~~state board~~ *district*, and a public hearing has been held with opportunity for interested parties, including representatives of the state board, to appear and submit written or oral presentations on the air quality impact of the source, alternatives thereto, control technology requirements, and other appropriate considerations.

(3) The owner or operator of the facility demonstrates, as required pursuant to Section 7410(j) of Title 42 of the United States Code, that emissions from construction or operation of the facility will not cause, or contribute to, air pollution in excess of any of the following:

(A) The maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this chapter applies more than one time per year.

(B) The national ambient air quality standard in any air quality control region basin.

(C) Any other applicable emission standard or standard of performance under this chapter.

(4) The proposed facility is subject to the best available control technology for each pollutant subject to regulation *for prevention of significant deterioration of clean air* under this chapter article emitted from, or which results from, the facility.

(5) ~~There has been~~ *The source or the district has conducted an* analysis of any air quality impacts projected for the area as a result of growth associated with the facility.

(6) The person who owns or operates, or proposes to own or operate, a major emitting facility for which a ~~permit is required under this chapter~~ *prevention of significant deterioration permit is required pursuant to this section* agrees to conduct monitoring as ~~may be the state board or the district determines~~ necessary to determine the effect which emissions from any facility may have, or is having, on air quality in any area which may be affected by emissions from a source.

(7) In the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under Section 7411 of Title 42 of the United States Code has been promulgated subsequent to August 7, 1977, for the source category, the ~~state board~~ *district* has approved the determination of best available *control* technology, as set forth in the permit.

(b) The demonstration pertaining to maximum allowable increases required under paragraph (3) of subdivision (a) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which ~~is~~ *was* in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with paragraph (4) of subdivision (a), shall be less than 50 tons per year and for which the owner or operator of the facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute

1 to ambient air quality levels in excess of the national secondary
2 ambient air quality standard for either of the pollutants.

3 (c) Any completed permit application for a major emitting
4 facility in any area to which this ~~chapter~~ *section* applies shall be
5 granted or denied not later than one year after the date of filing of
6 the completed application.

7 (d) In any case where a federal official charged with direct
8 responsibility for management of any lands within a class I area or
9 the Federal Land Manager of the lands, the ~~administrator~~
10 *Administrator of the United States Environmental Protection*
11 *Agency*, or the Governor of an adjacent state containing such a
12 class I area files a notice with the ~~state board~~ *district in which the*
13 *facility is located* alleging that emissions from a proposed major
14 emitting facility may cause or contribute to a change in the air
15 quality in the area and identifying the potential adverse impact of
16 the change, a permit shall not be issued unless the owner or
17 operator of the facility demonstrates to the ~~state board~~ *district in*
18 *which the facility is located* that emissions of particulate matter
19 and sulfur dioxide will not cause or contribute to concentrations
20 which exceed the maximum allowable increases for a class I area.

21 (e) In any case where the Federal Land Manager demonstrates
22 to the satisfaction of the ~~state board~~ *district in which the facility is*
23 *located* that the emissions from the facility will have an adverse
24 impact on the air quality related values (including visibility) of the
25 lands, notwithstanding the fact that the change in air quality
26 resulting from emissions from the facility will not cause or
27 contribute to concentrations which exceed the maximum
28 allowable increases for a class I area, a permit shall not be issued.

29 (f) In any case where the owner or operator of the facility
30 demonstrates to the satisfaction of the Federal Land Manager, and
31 the Federal Land Manager makes the appropriate certification,
32 that the emissions from the facility will have no adverse impact on
33 the air quality related values of the lands (including visibility),
34 notwithstanding the fact that the change in air quality resulting
35 from emissions from the facility will cause or contribute to
36 concentrations which exceed the maximum allowable increases
37 for class I areas, the ~~state board~~ *district in which the facility is*
38 *located* may issue a permit.

39 (g) In the case of a permit issued pursuant to subdivision (f), the
40 facility shall comply with the emission limitations under the

1 permit as may be necessary to assure that emissions of sulfur
2 oxides and particulates from the facility will not cause or
3 contribute to concentrations of the pollutant which exceed the
4 following maximum allowable increases over the baseline
5 concentration for such pollutants:

6 (1) For particulate matter, 19 micrograms per cubic meter as an
7 annual geometric mean, and 37 micrograms per cubic meter as a
8 24-hour maximum.

9 (2) For sulfur dioxide, 20 micrograms per cubic meter as an
10 annual arithmetic mean, 91 micrograms per cubic meter as a
11 24-hour maximum, and 325 micrograms per cubic meter as a
12 three-hour maximum.

13 ~~(h) (1) In any case where the owner or operator of a proposed~~
14 ~~major emitting facility who has been denied a certification under~~
15 ~~subdivision (f) demonstrates to the satisfaction of the state board,~~
16 ~~after notice and public hearing, and the state board finds, that the~~
17 ~~facility cannot be constructed by reason of any maximum~~
18 ~~allowable increase for sulfur dioxide for periods of 24 hours or less~~
19 ~~applicable to any class I area and, in the case of federal mandatory~~
20 ~~class I areas, that a variance under this clause will not adversely~~
21 ~~affect the air quality related values of the area (including~~
22 ~~visibility), the state board, after consideration of the Federal Land~~
23 ~~Manager's recommendation, if any, and subject to his or her~~
24 ~~concurrence, may grant a variance from the maximum allowable~~
25 ~~increase. If a variance is granted, a permit may be issued to the~~
26 ~~source pursuant to the requirements of this subdivision.~~

27 ~~(2) In any case in which the state board recommends a variance~~
28 ~~under this subdivision in which the Federal Land Manager does~~
29 ~~not concur, the recommendations of the state board and the Federal~~
30 ~~Land Manager may be transmitted to the President of the United~~
31 ~~States. The variance shall take effect if the President of the United~~
32 ~~States approves the state board's recommendations.~~

33 ~~(3) In the case of a permit issued pursuant to this subdivision,~~
34 ~~the facility shall comply with the emission limitations under the~~
35 ~~permit as may be necessary to assure that emissions of sulfur~~
36 ~~oxides from the facility shall not, during any day on which the~~
37 ~~otherwise applicable maximum allowable increases are exceeded,~~
38 ~~cause or contribute to concentrations which exceed the following~~
39 ~~maximum allowable increases for the areas over the baseline~~
40 ~~concentration for the pollutant and to assure that the emissions~~

~~shall not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:~~

(In micrograms per cubic meter)

Period of exposure Low terrain areas High terrain areas

24-hr maximum	36	62
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3-hr maximum	130	221
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~~(4) For purposes of paragraph (3), the term “high terrain area” means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of the facility, and the term “low terrain area” means any area other than a high terrain area.~~

~~(i)~~

~~(h) (1) The review provided for in subdivision (a) shall be preceded by an analysis in accordance with regulations of the state board, adopted under this subdivision, which may be conducted by the state board, any local district. The analysis may be conducted by the district, or by the major emitting facility applying for the permit (and reviewed and approved by the district), of the ambient air quality at the proposed site and in areas which may be affected by emissions from the facility for each pollutant subject to regulation under this chapter article that will be emitted from the facility.~~

(2) The analysis required by this subdivision shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from the facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this ~~chapter article~~. This data shall be gathered over a period of one calendar year preceding the date of application for a permit under this chapter unless the state determines that a complete and adequate analysis for these purposes may be accomplished in a shorter period. The results of the analysis shall be available at the time of the public hearing on the application for the permit.

42512. In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the state board shall adopt regulations at least as stringent as those adopted

by the administrator, as in effect on December 30, 2002, to prevent the significant deterioration of air quality which would result from the emissions of those pollutants.

42513. The state board or the district with jurisdiction shall take measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility that does not conform to the requirements of this ~~chapter~~ article, or that is proposed to be constructed in any area designated pursuant to Section 7407(d) of Title 42 of the United States Code as ~~attainment or unclassifiable~~ “attainment” or “unclassifiable” and that is not subject to an implementation plan that meets the requirements of this ~~chapter~~ article.

~~42514. For purposes of this chapter, the following definitions apply:~~

42514. For the purposes of this article, the following definitions apply, unless more stringent definitions pertaining to the prevention of significant deterioration in “attainment” or “unclassifiable” areas have been set forth in state law or adopted by a district or the state board, in which case the more stringent definitions will control:

(a) “Major emitting facility” means any of the following stationary sources of air pollutants which emit, or have the potential to emit, 100 tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than 250,000,000 British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250,000,000 British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities. The

1 term also includes any other source with the potential to emit 250
2 tons per year or more of any air pollutant. The term shall not
3 include new or modified facilities which are nonprofit health or
4 education institutions which have been exempted by the state.

5 (b) “Commenced” as applied to construction of a major
6 emitting facility means that the owner or operator has obtained all
7 necessary preconstruction approvals or permits required by
8 federal, state, or local ~~air pollution emissions and~~ air quality laws
9 or regulations and has done either of the following:

10 (1) Begun, or caused to begin, a continuous program of
11 physical onsite construction of the facility.

12 (2) Entered into binding agreements or contractual obligations,
13 which cannot be canceled or modified without substantial loss to
14 the owner or operator, to undertake a program of construction of
15 the facility to be completed within a reasonable time.

16 (c) ~~“Necessary”~~ “Necessary” preconstruction approvals or
17 permits” means those permits or approvals, required by the
18 ~~permitting authority~~ *district* as a precondition to undertaking any
19 activity under paragraph (1) or (2) of subdivision (b).

20 (d) “Construction” when used in connection with any source
21 or facility, includes the modification, as defined in Section 7411(a)
22 of the United States Code, of any source or facility.

23 (e) “Best available control technology” means an emission
24 limitation based on the maximum degree of reduction of each
25 pollutant subject to regulation under this ~~chapter~~ *article* emitted
26 from or which results from any major emitting facility, which the
27 ~~permitting authority~~ *district*, on a case-by-case basis, taking into
28 account energy, environmental, and economic impacts and other
29 costs, determines is achievable for the facility through application
30 of production processes and available methods, systems, and
31 techniques, including fuel cleaning, clean fuels, or treatment or
32 innovative fuel combustion techniques for control of each
33 pollutant. In no event shall application of “best available control
34 technology” result in emissions of any pollutants which will
35 exceed the emissions allowed by any applicable standard
36 established pursuant to ~~Section 7411 or Section 7412~~ *Sections*
37 *7411, 7412, and 7511b* of Title 42 of the United States Code.
38 Emissions from any source utilizing clean fuels, or any other
39 means, to comply with this subdivision shall not be allowed to
40 increase above levels that would have been required ~~under this~~

~~subdivision as it existed in federal law prior to~~ *under federal law prior to November 15, 1990.*

(f) “Baseline concentration” means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this ~~chapter,~~ *based on air quality data available in the federal article, based on air quality data available from the United States Environmental Protection Agency or a the district or the state board and on monitoring data as the permit applicant is required to submit. Ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this chapter.*

~~42515. For the purpose~~ *article.*

Article 3. New Source Review in Nonattainment Areas

42515. For the purposes of this chapter, the following definitions apply:

(a) “Reasonable further progress” means the annual incremental reductions in emissions of the relevant air pollutant as required by ~~this chapter~~ *Section 7511a of Title 42 of the United States Code* or may reasonably be required by the administrator, the state board, and a local district for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date, *as specified in the federal Clean Air Act (42 U.S.C. Sec. 7401, et seq.), or applicable regulations promulgated by the United States Environmental Protection Agency.*

(b) “Nonattainment area” means, for any air pollutant, an area which is designated “nonattainment” with respect to that pollutant within the meaning of Section 7407(d) of Title 42 of the United States Code.

(c) (1) “Lowest achievable emission rate” means for any source, that rate of emissions which reflects either of the following:

(A) The most stringent emission limitation which is contained in the implementation plan of ~~the~~ any state for a class or category of source, unless the owner or operator of the proposed source demonstrates that the limitations are not achievable.

(B) The most stringent emission limitation which is achieved in practice by the class or category of source, whichever is more stringent.

(2) In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(d) “Modifications” and ~~“modified”~~ “*modified*” mean the same as the term ~~“modification” as used~~ “*modification*” as defined in Section 42505.

~~42516. The plan provisions, including plan items, required to be submitted under this chapter shall comply with each of the following:~~

42516. The plan provisions, including plan items, adopted after January 1, 2004, shall be submitted to the state board for approval or disapproval in accordance with the procedures established in Sections 41500 to 41508, inclusive. The plan provisions shall comply with each of the following:

(a) The plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable, including reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology, and shall provide for attainment of the national primary ambient air quality standards.

(b) The plan provisions shall require reasonable further progress.

(c) The plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area, including periodic revisions as the state board may determine necessary to assure that the requirements of this chapter are met.

(d) The plan provisions shall expressly identify and quantify the emissions, if any, of any pollutant or pollutants which will be allowed, in accordance with Section 7503(a)(1)(B) of Title 42 of the United States Code, from the construction and operation of major new or modified stationary sources in each area. The plan shall demonstrate to the satisfaction of the state board that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(e) The plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with Section 7503 of Title 42 of the United States Code, *Chapter 4 (commencing with Section 42300) of Part 3*, and Section 42518.

(f) The plan provisions shall include enforceable emission limitations, and other control measures, means, or techniques ~~(including economic incentives such as fees, marketable permits, and auctions of emission rights)~~, as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of the standard in an area by the applicable attainment date specified in ~~this chapter~~ *Section 7511(a) of Title 42 of the United States Code*.

(g) The plan provisions shall also meet the applicable provisions of Section 7410(a)(2) of Title 42 of the United States Code.

(h) Upon application by any district, the state board may allow the use of equivalent *and equally effective* modeling, emission inventory, and planning ~~procedures, unless the state board determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the administrator or the state board.~~ *procedures*.

(i) The plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air ~~quality standard by the attainment date applicable under this chapter~~ *quality standard by the applicable attainment date*. The measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the *district or the state board*.

~~42517. (a) The permit program required by this chapter shall~~
42517. (a) *The permit program required by Section 42516*
shall provide that permits to construct and operate may be issued
if all of the following ~~occurs~~ occur:

~~(1) In accordance with this chapter and any regulations or~~
~~guidelines adopted by the state board pursuant to this chapter~~

(1) *In accordance with this article and any regulations adopted*
by the state board setting forth the method for the determination
of baseline emissions, the ~~permitting agency~~ district determines
either of the following:

(A) By the time the source is to commence operation, sufficient
offsetting ~~emissions~~ *emission* reductions have been obtained, so
that total allowable emissions from existing sources in the region,
from new or modified sources which are not major emitting
facilities, and from the proposed source will be sufficiently less
than total emissions from existing sources prior to the application
for the permit to construct or modify so as to represent, when
considered together with the plan provisions required under
Section 7502 of the United States Code, *and Sections 42515 to*
42518, inclusive, for reasonable further progress.

(B) In the case of a new or modified major stationary source
which is located in a zone within the nonattainment area *that has*
been identified by the ~~administrator~~ *Administrator of the United*
States Environmental Protection Agency in consultation with the
Secretary of Housing and Urban Development, as a zone to which
economic development should be targeted, that emissions of the
pollutant resulting from the proposed new or modified major
stationary source will not cause or contribute to ~~emissions~~
emission levels that exceed the allowance permitted for the
pollutant for the area from new or modified major stationary
sources under Section 7502(c)(4) of Title 42 of the United States
Code *or under subdivision (d) of Section 42516.*

(2) The proposed source is required to comply with the lowest
achievable emission rate.

(3) The owner or operator of the proposed new or modified
source has demonstrated that all major stationary sources owned
or operated by the person, or by any entity controlling, controlled
by, or under common control with the person, in the state are
subject to emission limitations and are in compliance, or on a
schedule for compliance, with all applicable emission limitations

1 and standards under this chapter *and in the applicable state*
2 *implementation plan.*

3 (4) Neither the ~~administrator or Administrator of the United~~
4 ~~States Environmental Protection Agency, nor~~ the state board has
5 determined that the applicable implementation plan is not being
6 adequately implemented for the nonattainment area in which the
7 proposed source is to be constructed or modified ~~in accordance~~
8 ~~with the requirements of this chapter.~~

9 (5) An analysis of alternative sites, sizes, production processes,
10 and environmental control techniques for the proposed source
11 demonstrates that *the* benefits of the proposed source significantly
12 outweigh the environmental and social costs imposed as a result
13 of its location, construction, or modification.

14 (b) Any emission reductions required as a precondition of the
15 issuance of a permit under paragraph (1) of subdivision (a) shall
16 be ~~federally enforceable~~ *legally and practicably enforceable*
17 *under state law* before the permit may be issued.

18 (e) ~~Any growth allowance included in an applicable~~
19 ~~implementation plan to meet the requirements of Section~~
20 ~~7502(b)(5) of Title 42 of the United States Code (as in effect~~
21 ~~immediately before November 15, 1990) shall not be valid for use~~
22 ~~in any area that received or receives a notice under Section~~
23 ~~7410(a)(2)(H)(ii) of Title 42 of the United States Code (as in effect~~
24 ~~immediately before November 15, 1990) or under Section~~
25 ~~7410(k)(1) of Title 42 of the United States Code that its applicable~~
26 ~~implementation plan containing the allowance is substantially~~
27 ~~inadequate.~~

28 (d)

29 (c) (1) The owner or operator of a new or modified major
30 stationary source may comply with any offset requirement in
31 effect under this chapter for increased emissions of any air
32 pollutant only ~~by obtaining emission reductions of the air pollutant~~
33 ~~from the same source or other sources in the same nonattainment~~
34 ~~area, except that the state board or district may allow the owner or~~
35 ~~operator of a source to obtain emission reductions in another~~
36 ~~nonattainment area if both the following criteria are met:~~

37 (A) ~~The other area has an equal or higher nonattainment~~
38 ~~classification than the area in which the source is located.~~

39 (B) ~~Emissions from the other area contribute to a violation of~~
40 ~~the national ambient air quality standard in the nonattainment area~~

1 ~~in which the source is located. The emission reductions shall be,~~
2 ~~by the time a new or modified source commences operation, in~~
3 ~~effect and enforceable and shall assure that the total tonnage of~~
4 ~~increased emissions of the air pollutant from the new or modified~~
5 ~~source shall be offset by an equal or greater reduction, as~~
6 ~~applicable, in the actual emissions of the air pollutant from the~~
7 ~~same or other sources in the area. by obtaining emission reductions~~
8 ~~in accordance with Sections 40709 to 40714.5, inclusive.~~

9 (2) Emission reductions otherwise required by this chapter, *or*
10 *any other provision of federal or state law, or any rule, order,*
11 *permit, plan, or regulation adopted by the state or a district,* shall
12 not be creditable as emissions reductions for purposes of any offset
13 requirement. Incidental emission reductions which are not
14 otherwise required ~~by this chapter~~ *shall be considered "surplus"*
15 *and* shall be creditable as emission reductions for such purposes
16 if such emission reductions meet the requirements of paragraph
17 (1).

18 (e) The state board and districts shall provide that control
19 technology information from permits issued under this chapter
20 shall be promptly submitted to the ~~administrator~~ *Administer of the*
21 *United States Environmental Protection Agency* for purposes of
22 making the information available through the
23 RACT/BACT/LAER clearinghouse to other states and to the
24 general public.

25 (f) The state board and districts shall allow a source to offset by
26 alternative or innovative means emission increases from rocket
27 engine and motor firing, and cleaning related to firing, at an
28 existing or modified major source that tests rocket engines or
29 motors under the following conditions:

30 (1) Any modification proposed is solely for the purpose of
31 expanding the testing of rocket engines or motors at an existing
32 source that was permitted to test those engines on November 15,
33 1990.

34 (2) The source demonstrates to the satisfaction of the ~~state~~
35 ~~board~~ *district* that it has used all reasonable means to obtain and
36 utilize offsets, as determined on an annual basis, for the emissions
37 increases beyond allowable levels, that all available offsets are
38 being used, and that sufficient offsets are not available to the
39 source.

(3) The source has obtained a written finding from the Department of Defense, the Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the ~~permitting authority~~ *district*, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the ~~permitting authority may impose an emissions fee to be paid to that authority district may impose an emissions fee~~ which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years. The ~~permitting authority~~ *district* shall utilize the fees in a manner that maximizes the emissions reductions in that area.

42518. For any area designated as being in nonattainment of the national ambient air quality standards as determined by the ~~administrator~~ *Administrator of the United States Environmental Protection Agency*, the terms “major source” and “major stationary source” shall include, in addition to the sources described elsewhere in this ~~chapter~~ *article* those sources defined as “major sources” and “major stationary sources” in Section 7511(a) of Title 42 of the United States Code, and the offset requirements applicable in those regions shall be as defined in Section ~~7511(a)~~ *7511a* of Title 42 of the United States Code, as summarized below:

Major Source Thresholds and Minimum Emission Offset Ratio Requirements for Ozone Nonattainment Areas			
OZONE NON- ATTAINMENT DESIGNATION	VOC (tons per year)	NO _x (tons per year)	MINIMUM EMISSIONS OFFSET RATIO REQUIRED
Extreme	10	10	1.5 to 1.0
Severe	25	25	1.3 to 1.0
Serious	50	50	1.2 to 1.0
Moderate	100	100	1.15 to 1.0

Moderate, in an ozone transport region	50	100	1.15 to 1.0
Marginal	100	100	1.1 to 1.0
Marginal in an ozone transport region	50	100	1.15 to 1.0
Attainment in an ozone transport region	50	100	1.15 to 1.0
All other nonattainment areas outside of an ozone transport region	100	100	1.0 to 1.0

Article 4. Citizen Suits

42519. (a) Except as provided in subdivision (c), any person may commence a civil action on his or her own behalf against the following:

~~(1) Any person, including the state and any of its subdivisions, and any other governmental instrumentality or agency who is~~

(1) Any private person who is alleged to have violated, if there is evidence that the alleged violation, has been repeated, or to be in violation, of either of the following:

(A) An emission standard or limitation under this chapter.

(B) An order issued by the ~~administrator~~ Administrator of the United States Environmental Protection Agency, the state board, or a district with respect to an emission standard or limitation.

~~(2) The state board or district where there is alleged a failure of the state board or district to perform any act or duty under this chapter which is not discretionary.~~

~~(3)~~

(2) Any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under this chapter or Chapter 4 (commencing with Section 42300) or who is alleged to have violated, if there is evidence that the alleged violation has been repeated, or to be in violation of any condition of such permit.

(b) An action pursuant to this section may be brought in any court of competent jurisdiction to enforce such an emission standard or limitation, or such an order, ~~or to order the state board or district to perform an act or duty, as the case may be, and to apply any appropriate civil penalties. The state courts shall have jurisdiction to compel agency action unreasonably delayed. In any action for unreasonable delay, notice to the entities shall be provided 180 days before commencing the action.~~

(c) No action may be commenced under paragraph (1) of subdivision (a) as follows:

(1) Prior to 60 days after the plaintiff has given notice of the violation to the district and the state board in which the violation occurs and to any alleged violator of the standard, limitation, or order.

(2) If the administrator, district, or state board has commenced and is diligently prosecuting a civil action in a court of the United States or the state to require compliance with the standard, limitation, or order, but in any such action any person may intervene as a matter of right.

~~(3) Under paragraph (2) of subdivision (a), prior to 60 days after the plaintiff has given notice of such action to the administrator, to the state board, and to the district affected, if any.~~

(d) (1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought in any court of competent jurisdiction.

(2) In any action under this section, the state board or ~~relevant district~~ *the district having jurisdiction over the stationary source*, if not a party, may intervene as a matter of right at any time in the proceeding.

(3) Whenever any action is brought under this section, the plaintiff shall serve a copy of the complaint on the Attorney General and on the state board and ~~relevant~~ *appropriate* district, if any. No consent judgment or stipulated judgment shall be entered in an action brought under this section in which the state board or local district is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment or stipulated judgment by the Attorney General, the state board, and the ~~relevant~~ *appropriate* district, if any, during which time the state *or district* may submit its comments on the proposed consent

1 judgment to the court and parties or may intervene as a matter of
2 right.

3 (e) The court, in issuing any final order in any action brought
4 pursuant to subdivision (a), may award costs of litigation
5 (including reasonable attorney and expert witness fees *in*
6 *accordance with Section 1021.5 of the Code of Civil Procedure*) to
7 any party, whenever the court determines an award is appropriate.
8 The court may, if a temporary restraining order or preliminary
9 injunction is sought, require the filing of a bond or equivalent
10 security in accordance with the Code of Civil Procedure.

11 (f) Nothing in this section shall restrict any right which any
12 person or class of persons may have under any statute or common
13 law to seek enforcement of any emission standard or limitation or
14 to seek any other relief, including relief against the administrator
15 or a state *or local* agency. Nothing in this section shall be construed
16 to prohibit, exclude, or restrict any state, local, or interstate
17 authority from bringing any enforcement action or obtaining any
18 judicial remedy or sanction in any state ~~or local~~ court or bringing
19 any administrative enforcement action or obtaining any
20 administrative remedy or sanction in any state or local
21 administrative agency, department, or instrumentality; against the
22 United States, any department, agency, or instrumentality thereof,
23 or any officer, agent, or employee thereof under state or local law
24 respecting control and abatement of air pollution.

25 (g) For purposes of this section, the term “emission standard or
26 limitation under this chapter” means any of the following:

27 (1) A schedule or timetable of compliance, emission limitation,
28 standard of performance, or emission standard.

29 (2) A control or prohibition respecting a motor vehicle fuel or
30 fuel additive.

31 (3) Any condition or requirement of a permit required under
32 this chapter, or any condition or requirement under an applicable
33 implementation plan relating to transportation control measures,
34 air quality maintenance plans, vehicle inspection and maintenance
35 programs, or vapor recovery requirements, relating to fuels and
36 fuel additives, relating to visibility protection, any condition or
37 requirement relating to ozone protection, or any requirement
38 under Section 39659 or Article 4 (commencing with Section
39 39665), or a program for which delegation and approval was
40 obtained pursuant to Section 7411 or 7412 of Title 42 of the United

States Code, without regard to whether such requirement is expressed as an emission standard or otherwise.

(4) Any other standard, limitation, or schedule established under any permit issued pursuant to Subchapter V of the Clean Air Act or under any applicable state implementation plan approved by the ~~administrator~~ *Administrator of the United States Environmental Protection Agency* or the state board, any permit term or condition, and any requirement to obtain a permit as a condition of operations which is in effect under this chapter, Chapter 4 (commencing with Section 42300), or under an applicable implementation plan.

(h) (1) Penalties received under this section shall be ~~allocated as set forth in Sections 42405 and 42405.1. paid to the Treasurer for deposit in the Air Pollution Control Fund.~~

(2) Notwithstanding paragraph (1), the court in any action under this section to apply civil penalties shall have discretion to order that the civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the state board and ~~relevant~~ *appropriate* district, if any, in exercising its discretion and selecting any projects. The amount of any payment in any action shall not exceed one hundred thousand dollars (\$100,000):

~~SEC. 2.—~~, or 25 percent of the penalty, whichever is less.

(i) (1) *For the purposes of this section, the term “person” includes an individual, corporation, partnership, association, state, municipality, political subdivision of the state, any agency, department, or instrumentality of the state, and any officer, agent, or employee of any of those entities.*

(2) *For the purposes of this section, the term “private person” includes an individual, corporation, partnership, nongovernmental association, and any officer, agent, or employee of those entities.*

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 ~~SEC. 4.~~

5 *SEC. 4.* No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 a local agency or school district has the authority to levy service
8 charges, fees, or assessments sufficient to pay for the program or
9 level of service mandated by this act, within the meaning of
10 Section 17556 of the Government Code.

11 _____
12 CORRECTIONS

13 **Text — Pages 6, 16, 26, 27, 32.**

14 _____
15

